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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 13, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Sale of Lease at Public Auction for Commercial Purposes, Kawaihae 1st, South Kohala, Island of Hawaii, Tax Map Key: (3) 6-1-3: 15.

REQUEST:

Sale of lease at public auction for commercial purposes as allowed under County zoning.

LEGAL REFERENCE:

Sections 171-6, -13, -14, -16, -17, -18, -36, -41, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kawaihae 1st, South Kohala, Island of Hawaii, identified by Tax Map Key: (3) 6-1-3: 15, as shown on "**Exhibit A**".

AREA:

1.32 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Urban
County of Hawaii	MCX-1a: Industrial-commercial mixed use

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Vacant

CHARACTER OF USE:

Commercial purposes as allowed under the County of Hawaii (County) zoning ordinance, as said zoning ordinance may be amended from time to time, but excluding those uses prohibited in Section 2.D. of County Ordinance 05-153. A copy of the Ordinance is attached as "**Exhibit B**".

LEASE TERM:

Sixty-five (65) years from the commencement date of the lease.

COMMENCEMENT DATE:

The commencement date shall be thirty (30) days from the date that the successful bidder at public auction receives Shoreline Management Area (SMA) approval for the development of the property, provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

UPSET MINIMUM ANNUAL BASE RENT:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

KNOWN RENT PERIOD:

Twenty (20) years, subject to fixed increases in the minimum annual base rent

FIXED INCREASES IN MINIMUM ANNUAL BASE RENT:

The frequency and amount of increases in the minimum annual base rent during the 20 year known rent period to be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

PERCENTAGE RENT:

If any of the following uses are conducted on the property, including by any sublessee, the lessee shall pay a percentage rent based on the gross revenues from such uses or operations: catering establishments, convenience stores, restaurants, bars, nightclubs, self-storage facilities, theaters, home improvement centers, or any other retail establishments permitted on the property under the County of Hawaii zoning code, as such zoning code may be amended from time to time. The percentage rent shall be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

EFFECTIVE RENTAL:

The greater of the annual minimum base rent or annual percentage rent, if any.

FREQUENCY OF RENT PAYMENTS:

Annual minimum base rent to be paid in semi-annual payments, in advance. Percentage rent, if any, to be paid annually in arrears, no later than sixty (60) days after the close of the annual base rent payment period; provided, however, that the Chairperson may extend the deadline for payment of percentage rents for good cause.

RENT WAIVER:

The lease rental for the first twelve (12) months after the commencement date of the lease shall be waived, pursuant to HRS § 171-6 (7).

QUARTERLY REPORTS:

Lessee shall submit quarterly reports detailing the gross revenues from uses and operations on the property. The reports shall be submitted no later than 30 days after the close of the quarter.

RENTAL REOPENINGS:

At the end of the 20th, 30th, 40th and 50th year of the lease term, as determined by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

MINIMUM IMPROVEMENTS:

Within three (3) years from the commencement date of the lease, the Lessee shall have completed construction of improvements and structures on the property having a value of not less than \$3,000,000.00. Said improvements shall be in accordance with plans submitted to the Chairperson for approval prior to their construction.

IMPROVEMENT BOND:

Amount of improvements.

SUBLETTING:

The Lessee shall be permitted to sublet portions of the property located within the improvements constructed on the property without further consent of the Lessor.

COMPLIANCE WITH CONDITIONS OF COUNTY OF HAWAII ORDINANCE NO. 05-153:

County of Hawaii Ordinance No. 05-153 rezoned the property from the Open district classification to the current Industrial-Commercial Mixed (MCX-1a) district. The property is subject to the various conditions and restrictions imposed by Ordinance No. 05-153, and the Lessee shall comply with all such conditions and restrictions.

SPECIAL MANAGEMENT AREA PERMIT:

The subject parcel is located within the County's Special Management Area (SMA). Any development proposed in the SMA must be reviewed against the SMA guidelines set forth in Section 205 A-26, HRS and the SMA guidelines contained in Planning Commission Rule 9.

The successful bidder at the public auction shall comply with all applicable SMA laws, ordinances, rules and regulations, and shall apply for a special management area permit (SMP), at the successful bidder's sole expense, as may be required by the County of Hawaii for the development and/or use of the subject property. The successful bidder shall submit an SMA permit application to the County within 180 days of the auction date of the lease. In the event the successful bidder does not obtain the required SMP within eighteen (18) months of the auction date, all rights to the issuance of the lease may be terminated by either the successful bidder or DLNR. The Chairperson may approve an

extension to the 18 month deadline of up to twelve (12) additional months for good cause, subject to terms and conditions deemed necessary or desirable by the Chairperson, including but not limited to the payment by the successful bidder of an extension fee.

The successful bidder shall comply with the time limits set forth above, notwithstanding the fact that County of Hawaii Ordinance No. 05-153 allows the SMP to be obtained within a five-year period.

PROPERTY CHARACTERISTICS:

Utilities:	Electricity, water, telephone, sewer. Pursuant to the County of Hawaii Department of Water Supply Water, the property has been assigned three units of water. Prospective lessees shall be responsible for conducting their own due diligence regarding utility services
Existing Improvements:	None
Legal access to property:	From Akoni Pule Highway. The location and design are subject to DOT approval, and prospective lessees shall be responsible for conducting their own due diligence regarding such access
Subdivision:	Staff has verified that the subject property to be auctioned is a legally subdivided lot.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

An environmental assessment (EA) was prepared and submitted as part of DLNR's Change of Zone application to the County of Hawaii Planning Department for the subject property. The EA considered and reviewed the impacts of DLNR's proposed zone change for the property from residential to industrial-commercial mixed use.

The Final EA for the subject project was published in the OEQC's Environmental Notice on December 23, 2004 with a finding of no significant impact (FONSI).

REMARKS:

- A. Description of the Subject Property and Surrounding Areas: The property is approximately 1.32 acres and is located in Kawaihae, overlooking Kawaihae Bay and the Kawaihae Harbor. The property was acquired by the State in 1959 and was originally intended to be included as part of the Kawaihae Harbor. However, the site was ultimately not included in the final plans for the harbor and has remained vacant all these years.

The lands bordering to the south were set aside to the County of Hawaii for recreational purposes in 2004 and are primarily used by the Kawaihae Canoe Club. The set aside area consists of approximately 4.67 acres and is located immediately across the Kawaihae Boat Ramp. The set aside area includes a strip of land approximately 70 feet wide between the subject property and the ocean. This strip is undevelopable and the

set aside to the County for recreational purposes ensures this shoreline area will remain in open space.

The adjacent property to the north is owned by the US Government for the operation of an existing lighthouse. Beyond the lighthouse property is a residential subdivision developed by the Department of Hawaiian Home Lands.

- B. Demand for the Property: Over the years, the State has received a number of inquiries from parties interested in utilizing the property for a variety of uses. However, the property's "Open" zoning precluded development of the site.

The set aside of the adjacent shoreline area to the County for recreational purposes essentially ensures that the subject property will continue to have unobstructed views of the ocean and South Kohala coastline, thus making it a prime oceanfront parcel and ideal for a single or multi restaurant and commercial development. Staff feels that the growth of the South Kohala area and the demand for non-resort eateries and retail alternatives will result in a strong demand for this property. Staff has had informal discussions with a number of developers and restaurant operators that have indicated strong interest in the property.

Recently, the County of Hawaii approved DLNR's application to rezone the property to the industrial-commercial mixed use district (MCX-1a), which would allow the issuance of a commercial ground lease. Such a lease would generate significant lease rent revenues for the State.


- C. Waiver of Consent to Subleases: Due to the size of the subject property, there is a good possibility that the development of the site would include multiple sublessees. If the lessee constructs improvements intended to have multiple tenants, staff feels it would be appropriate to allow the lessee to enter subleases for areas within the lessee's improvements without consent from the Board. Accordingly, staff is requesting the Board waive the consent requirement for subleases within the lessee's improvements. This waiver would also apply to subleases entered into by any successor lessee.

RECOMMENDATION: That the Board:

1. Find the area to be an economic unit in terms of the intended use.
2. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
3. Authorize the sale of a lease at public auction covering the subject area for commercial purposes as permitted under the County of Hawaii zoning ordinance (as said zoning ordinance may be amended from time to time, but excluding those uses prohibited in Section 2.D. of County Ordinance 05-153), under the terms and conditions stated above, which are by this reference incorporated herein and subject further to the following:

- a. In event the successful bidder is unable to obtain the required SMP pursuant to the terms and conditions stated above, all rights of the successful bidder to the lease may be terminated by either party;
- b. The standard terms and conditions of the most current commercial general lease form, as may be amended from time to time;
- c. Waiver of the Board's consent to subleases of areas within the lessee's improvements.
- d. Review and approval by the Department of the Attorney General; and
- e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Keith Chun
Planning and Development Manager

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson



COUNTY OF HAWAII STATE OF HAWAII



BILL NO. 157

ORDINANCE NO. 05 153

AN ORDINANCE AMENDING SECTION 25-8-12 (KAWAIHAE-PUAKO DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM OPEN (O) TO INDUSTRIAL-COMMERCIAL MIXED (MCX-1a) AT KAWAIHAE 1ST, SOUTH KOHALA, HAWAII, COVERED BY TAX MAP KEY 6-1-3:15.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1. Section 25-8-12, Article 8, Chapter 25 (Zoning Code) of the Hawaii County Code 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kawaihae 1st, South Kohala, Hawaii, shall be Industrial-Commercial Mixed (MCX-1a):

Beginning at the north corner of this parcel of land and on the southwest side of Akoni Pule Highway (Kawaihae Wharf Approach, Federal Aid Project 11-D), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU KAMALII 2" being 3022.81 feet South and 3744.32 feet West, thence running by azimuths measured clockwise from True South:

1. Along the southwest side of Akoni Pule Highway (Kawaihae Wharf Approach, Federal Aid Project 11-D) on a curve to the left with a radius of 2894.79 feet, the chord azimuth and distance being:
316° 25' 22" 254.95 feet;
2. 39° 11' 152.24 feet along Public Recreational Purposes Site, Governor's Executive Order 4042;
3. 107° 11' 155.20 feet along Public Recreational Purposes Site, Governor's Executive Order 4042;

- | | | | |
|----|----------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. | 151° 11' | 199.20 | feet along Public Recreational Purposes Site, Governor's Executive Order 4042; |
| 5. | 243° 27' | 184.15 | feet along Kawaihae Lighthouse Reservation, Presidential Executive Order 7665 dated July 17, 1937 to the point of beginning and containing an area of 1.32 Acres. |

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 (2005 Edition), the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
 - (2) Reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to:
 - (A) Protection of the public from the potentially deleterious effects of the proposed use, or
 - (B) Fulfillment of the need for public service demands created by the proposed use.
- A. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
 - B. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within 90 days from the effective date of this ordinance.
 - C. A Special Management Area Use Permit shall be secured within five (5) years from the effective date of this ordinance.

- D. As agreed to by the applicant, the following numbered uses under Chapter 25 (Zoning Code), Article 5, Division 13 (MCX, Industrial-Commercial Mixed Districts), Section 25-5-132 shall not be permitted on the property: (1) Agricultural products processing, minor; (4) Automobile sales and rentals; (5) Automobile service stations; (7) Broadcasting stations; (9) Car washing; (11) Cemeteries and mausoleums; (14) Commercial parking lots and garages; (23) Laboratories, medical and research; (24) Manufacturing, processing and packaging establishments, light; (34) Repair establishments, minor; (41) Self-storage facilities; (42) Telecommunications antennas; (47) Warehousing; and (48) Wholesaling and distribution operations
- E. All driveway connections to the Akoni Pule Highway shall conform to the requirements of the State Department of Transportation Highways Division.
- F. A drainage study of the property shall be prepared and submitted to the Department of Public Works for review and approval, prior to submittal of plans for Plan Approval review. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
- G. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- H. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- I. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy for any development on the site.

- J. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigation measures have been taken.
- K. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- L. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, if applicable, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code relating to Affordable Housing Policy. This requirement shall be approved by the County Housing Agency prior to the receipt of Final Plan Approval.
- M. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- N. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval have been satisfied. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

O. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:

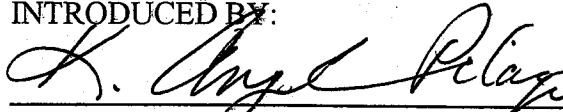
1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
3. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.
4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.

SECTION 3. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

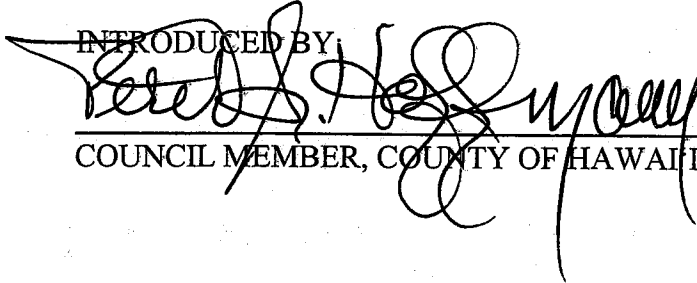
SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAII

INTRODUCED BY:

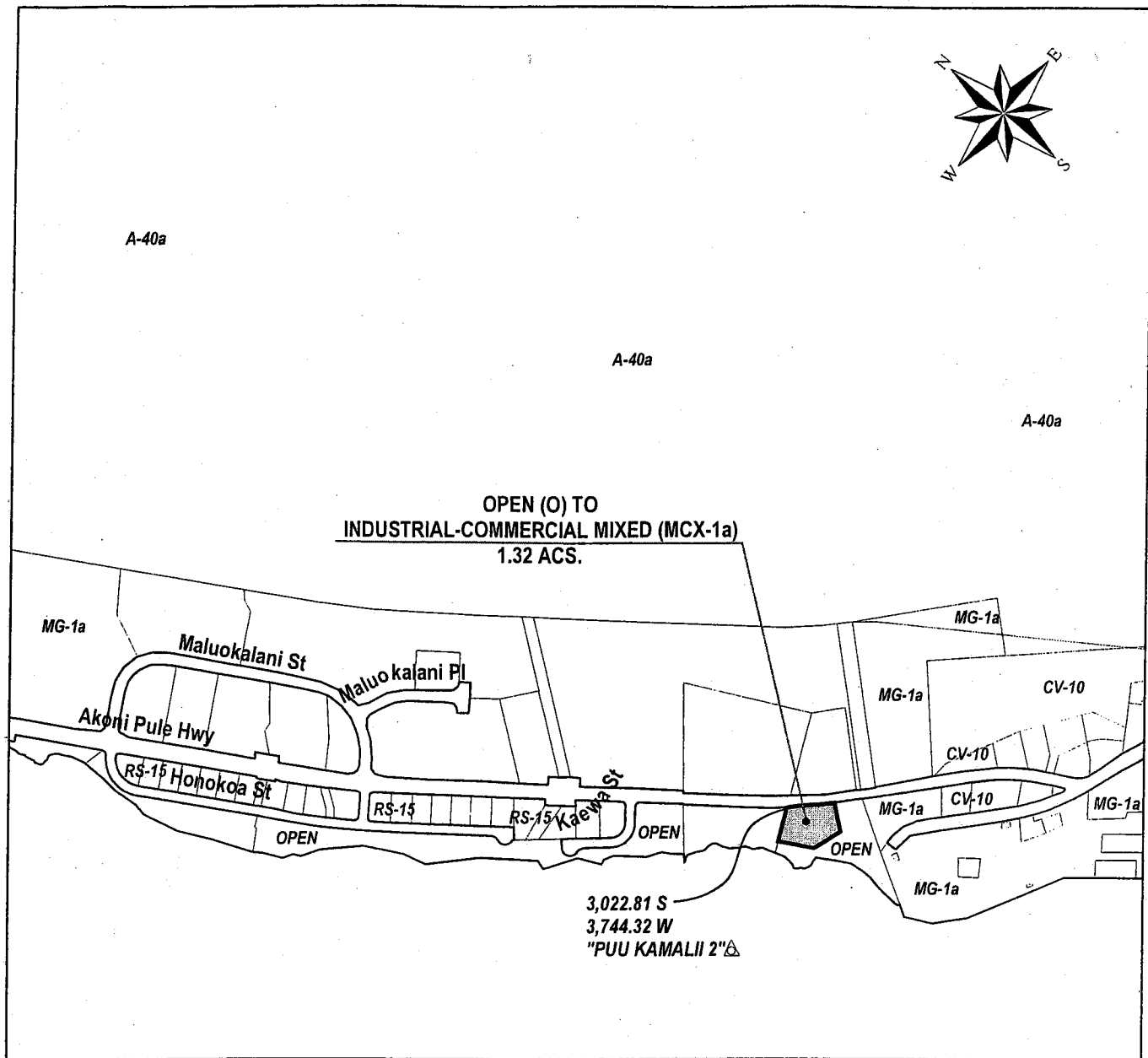


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: November 9, 2005
Date of 1st Reading: November 9, 2005
Date of 2nd Reading: November 22, 2005
Effective Date: December 2, 2005

REFERENCE: Comm. 464



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-12 (KAWAIHAE-PUAKO ZONE MAP)
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION
 FROM OPEN (O)
 TO INDUSTRIAL-COMMERCIAL MIXED (MCX-1a)
 AT KAWAIHAE 1st, SOUTH KOHALA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK
County of Hawai'i
Hilo, Hawai'i

Introduced By: K. Angel Pilago/Pete Hoffmann
Date Introduced: November 9, 2005
First Reading: November 9, 2005
Published: N/A

REMARKS: _____

Second Reading: November 22, 2005
To Mayor: November 23, 2005
Returned: December 2, 2005
Effective: December 2, 2005
Published: December 9, 2005

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki			X	
Higa	X			
Hoffmann	X			
Holschuh	X			
Ikeda	X			
Isbell	X			
Jacobson	X			
Pilago	X			
Safarik	X			
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann	X			
Holschuh	X			
Ikeda	X			
Isbell	X			
Jacobson	X			
Pilago	X			
Safarik	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
FORM AND LEGALITY:

Ang D. Self
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date NOV 30 2005

[Signature]
COUNCIL CHAIRMAN

Constance R. Kiu
COUNTY CLERK

Approved/Disapproved this 2nd day
of December, 2005

Harry K.
MAYOR, COUNTY OF HAWAII

Bill No.: 157
Reference: C-464/PC-37
Ord No.: 05 153